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CHAI KOK CHOI

v.

KETUA POLIS NEGARA & ORS

B

FEDERAL COURT, PUTRAJAYA
AHMAD FAIRUZ CJ
HASHIM YUSOFF FCJ
AZMEL MAAMOR FCJ
[CIVIL APPEAL NO: 01-329-2005 (W)]

C

26 OCTOBER 2007

ADMINISTRATIVE LAW: *Public servants - Dismissal of police officer - Rules of natural justice - Judicial precedent - Oral hearing, whether necessary - Whether dismissal justified*

D

PUBLIC SERVANTS: *Dismissal - Dismissal of police officer - Rules of natural justice - Judicial precedent - Oral hearing, whether necessary - Whether dismissal justified*

The appellant was an Inspector in the Royal Malaysian Police
E Force before he was dismissed from service by a letter dated 22 June 1995. Dissatisfied with that decision, he filed an action in the High Court seeking a declaration that his dismissal from the police force was null and void and that he be restored to his original rank of inspector. Although the High Court allowed the
F action, the Court of Appeal reversed that decision, resulting in the present appeal. The appellant was granted leave to appeal on the following questions of law: (i) is it in accordance with the rules of natural justice that the applicant be denied all the materials contained in the investigation papers whilst the same were supplied
G to the Inspector General of Police, who is the disciplinary authority, and whether when there are two conflicting decisions given by the Court of Appeal, should not the later decision prevail over the earlier decision, that is to say, should not *Ang Seng Wan v. Suruhanjaya Polis Di Raja Malaysia & Anor* be preferred and
H accepted in deciding this case rather than *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors*, a case decided some seven years earlier?; and (ii) is it within the purview of the court to hold in any particular case that the facts and surrounding circumstances require the
I disciplinary authority to afford the applicant an oral hearing so as to meet the requirements of procedural fairness when it is obvious

that crucial matters in favour of the applicant were not taken into account or considered by the said disciplinary authority in the disciplinary process?

Held (dismissing the appeal)
Per Azmel Maamor FCJ delivering the judgment of the court:

(1) In respect of the first question of law, it is of particular importance to remember the well-established principle that the rule of precedent shall apply whenever the relevant facts of an earlier case are similar to the relevant facts of a subsequent case, and if such situation happens the decision of the earlier case shall be binding on the subsequent case. However, if the relevant facts were not similar then the earlier decision would be distinguished and, as such, would not be binding on the subsequent case. That is exactly the position between *Ang Seng Wan (supra)* and *Raja Abdul Malek (supra)* as the relevant facts of the two cases were not similar. In *Ang Seng Wan (supra)*, the document and the service record had been used to determine proper sentence imposed against the police officer. At the High Court hearing, Ang Seng Wan's counsel asked for a copy of the document but was refused. In *Raja Abdul Malek (supra)*, no document was requested by Raja Abdul Malek at the High Court hearing. Hence, the court held that no document was required to be given to him. It was for that reason that the Court of Appeal in this case followed the decision in *Raja Abdul Malek (supra)*, because no request for any document was made by the plaintiff. The Court of Appeal's decision was totally correct. The only material before the High Court was that the investigation papers pertaining to this case had been sent to the Inspector-General of Police and nothing else. There was nothing before the court that whatever contained in the investigation papers had been used adversely against the appellant except perhaps to frame the three charges against him. Hence, the answer to the first question was that *Ang Seng Wan (supra)* was distinguished from *Raja Abdul Malek (supra)*, and the Court of Appeal had correctly followed the decision in *Raja Abdul Malek (supra)* as the relevant facts in the instant case were similar to those of *Raja Abdul Malek (supra)*. (paras 6, 7 & 8)

(2) As regards the second question, it was taken into consideration that the appellant had admitted committing the first two charges, as was clearly shown in the letter dated 23 May 1995 in reply to the show cause letter. That being the position, there would be no useful purpose served to have an oral hearing. An oral hearing might have been necessary if the appellant had not admitted committing the offences. It was tantamount to him having pleaded guilty to those charges. As such, a hearing would no longer be necessary. The explanation given by the appellant would only serve to mitigate the sentence but such explanation would not require having an oral hearing. Having it written as done by the appellant would be sufficient and would not cause any injustice to him. Thus, the answer to the second question was that on the facts and circumstances of this case, an oral hearing would not be necessary. (para 9)

(3) Based on the first two charges alone that the appellant admitted having committed, in view of the seriousness of such offences committed by a police officer, the punishment of dismissal was quite appropriate under the circumstances. The explanation given would not be sufficient to have the punishment reduced to anything less than dismissal. (para 10)

Bahasa Malaysia *Translation Of Headnotes*

Perayu adalah seorang Inspektor dalam Pasukan Polis Di Raja Malaysia sebelum beliau dibuang kerja melalui sepucuk surat bertarikh 22 Jun 1995. Tidak berpuas hati dengan keputusan tersebut, perayu memfailkan tindakan di Mahkamah Tinggi memohon deklarasi bahawa pembuangan kerjanya dari pasukan polis adalah batal dan tak sah dan supaya beliau dikembalikan ke jawatannya asalnya. Walaupun Mahkamah Tinggi membenarkan tindakan, Mahkamah Rayuan mengakas keputusan tersebut sekaligus mencetuskan rayuan di sini. Perayu diberi kebenaran untuk merayu atas soalan-soalan undang-undang berikut: (i) adakah ianya selaras dengan kaedah keadilan semulajadi apabila pemohon dinafikan semua butiran yang terkandung di dalam fail penyiasatan sedangkan butiran yang sama telah dibekalkan kepada Ketua Polis Negara yang merupakan pihakberkuasa disiplin, dan sama ada di mana terdapat dua keputusan bercanggah diberikan oleh Mahkamah Rayuan, adakah keputusan terkemudian akan mengatasi keputusan terdahulu, iaitu, dengan kata lain, haruskah

Ang Seng Wan v. Suruhanjaya Polis Di Raja Malaysia & Anor diutamakan dan diterimapakai berbanding dengan *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors*, satu kes yang diputuskan tujuh tahun sebelumnya?; dan (ii) dalam sesuatu kes, adakah ianya dalam bidangkuasa mahkamah untuk memutuskan bahawa fakta dan halkeadaan sekeliling mengkehendaki pihakberkuasa disiplin memberikan pemohon peluang untuk didengar bagi memenuhi keperluan keadilan prosedur walaupun ianya amat jelas bahawa perkara-perkara penting yang memihak kepada pemohon telah tidak dipertimbang oleh pihakberkuasa disiplin tersebut dalam proses disiplin?

Diputuskan (menolak rayuan)
Oleh Azmel Maamor HMP menyampaikan penghakiman mahkamah:

(1) Berhubung soalan undang-undang yang pertama, adalah penting untuk mengingati prinsip mantap bahawa kaedah duluan terpakai apabila fakta-fakta relevan kes terdahulu adalah serupa dengan fakta-fakta relevan kes terkemudian, dan di mana itu berlaku keputusan kes terdahulu akan mengikat kes yang terkemudian. Bagaimanapun, jika fakta-fakta relevan tidak sama, maka keputusan terdahulu akan dibezakan dan dengan itu tidak boleh mengikat kes yang terkemudian. Inilah kedudukannya di antara kes *Ang Seng Wan (supra)* dan *Raja Abdul Malek (supra)* kerana fakta-fakta relevan kedua-dua kes adalah tidak serupa. Di dalam *Ang Seng Wan (supra)*, dokumen serta rekod perkhidmatan telah digunakan bagi menentukan hukuman wajar yang dikenakan ke atas pegawai polis berkenaan. Di pendengaran di Mahkamah Tinggi, peguam Ang Seng Wan memohon sesalinan dokumen ini tetapi tidak diberi. Di dalam *Raja Abdul Malek (supra)*, tiada dokumen dipohon oleh Raja Abdul Malek di pendengaran Mahkamah Tinggi. Oleh itu, mahkamah memutuskan bahawa tiada dokumen perlu diberikan kepadanya. Atas alasan inilah Mahkamah Rayuan di dalam kes semasa mengikuti keputusan *Raja Abdul Malek (supra)*, kerana tiada permohonan untuk mana-mana dokumen dibuat oleh plaintif. Keputusan Mahkamah Rayuan adalah betul sepenuhnya. Bahan-bahan yang ada di hadapan Mahkamah Tinggi hanyalah bahawa fail penyiasatan berkaitan dengan kes telah diserahkan kepada Ketua Polis Negara dan hanya itu sahaja. Tiada apa-apa di hadapan mahkamah yang menunjukkan bahawa apa-apa yang terkandung di dalam fail

penyiasatan itu telah digunakan untuk menjejaskan perayu, kecuali mungkin setakat untuk merangka ketiga-tiga pertuduhan terhadapnya. Oleh itu, jawapan kepada soalan pertama adalah bahawa *Ang Seng Wan (supra)* adalah boleh dibezakan dari *Raja Abdul Malek (supra)*, berakibat Mahkamah Rayuan telah dengan betulnya mengikuti keputusan di dalam *Raja Abdul Malek (supra)* memandangkan fakta-fakta relevan dalam kes semasa adalah serupa dengan yang terdapat di dalam *Raja Abdul Malek (supra)*.

(2) Berhubung soalan kedua, pertimbangan telah diberi bahawa perayu mengaku melakukan dua pertuduhan pertama, seperti yang terserlah dengan jelas dari surat bertarikh 23 Mei 1995 bagi menjawab surat tunjuk sebab. Dalam keadaan sedemikian, tiada gunanya lagi untuk mengadakan pendengaran oral. Pendengaran oral mungkin perlu jika perayu tidak mengaku melakukan kesalahan-kesalahan. Ia samalah seperti membuat pengakuan salah terhadap pertuduhan-pertuduhan tersebut. Oleh itu, pendengaran sudah tidak lagi perlu. Penerangan yang diberikan perayu boleh bertindak sebagai peringan hukuman, tetapi tidak sampai kepada memerlukan pendengaran. Adalah memadai bahawa penjelasan dibuat secara bertulis dan ia sekali-kali tidak menyebabkan apa-apa ketidakadilan kepada perayu. Oleh itu, jawapan kepada soalan kedua adalah, berdasarkan fakta dan halkkeadaan kes ini, pendengaran oral adalah tidak perlu.

(3) Berdasarkan hanya kepada dua pertuduhan pertama yang perayu mengaku melakukannya, serta seriusnya bahawa kesalahan tersebut dilakukan oleh seorang pegawai polis, hukuman buang kerja adalah wajar dalam keadaan yang wujud. Penjelasan yang diberi tidak memadai untuk menjatuhkan hukuman yang lebih ringan dari buang kerja.

Case(s) referred to:

Ang Seng Wan v. Suruhanjaya Polis Di Raja Malaysia & Anor [2002] 1 CLJ 493 CA ***(dist)***

Inspector-General of Police & Anor v. Alan Noor Kamat [1987] 1 LNS 101 SC ***(refd)***

Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 CA ***(foll)***

For the appellant - Christopher Fernando (Faiz Fadzil with him); M/s Aris Rizal Christopher Fernando & Co
For the respondents - Amarjeet Singh FC

[Appeal from Court of Appeal; Civil Appeal No: W-01-78-2002]

Reported by Suresh Nathan

JUDGMENT

Azmel Maamor FCJ:

[1] The appellant in this case has been granted leave to appeal to the Federal Court on the following questions of law for consideration of the court:

i) Is it in accordance with the rules of natural justice that the applicant be denied all the materials contained in the investigation papers whilst the same were supplied to the Inspector General of Police who is the disciplinary authority and whether when there are two conflicting decisions given by the Court of Appeal, should not the later decision prevail over the earlier decision that is to say should not *Ang Seng Wan v. Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 1 CLJ 493 be preferred and accepted in deciding this case rather than *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619 a case decided some seven years earlier?

ii) Is it within the purview of the court to hold in any particular case that the facts and surrounding circumstances require the disciplinary authority to afford the applicant an oral hearing so as to meet the requirements of procedural fairness when it is obvious that crucial matters in favour of the applicant were not taken into account or considered by the said disciplinary authority in the disciplinary process?

[2] The appellant was an Inspector in the Royal Malaysian Police Force before he was dismissed from the service by a letter dated 22 June 1995. Dissatisfied with that decision, the appellant filed an action in the Kuala Lumpur High Court seeking for declaration that his dismissal from the police force was null and void and that he be restored to his original rank of Inspector. The

A action was allowed by the High Court. However the Court of Appeal reversed the decision of the High Court. Hence, this appeal to the Federal Court.

Findings Of The High Court

B **[3]** The learned trial judge found that the respondents had clearly breached all semblance of natural justice. In his grounds of judgment the learned trial judge said:

> The Disciplinary Authority had no power to prejudge on the
C charges and decide for itself that the charges merited only the punishment of dismissal. Having taken such one-sided view the Disciplinary Authority could not be said to be unbiased. Having made its decision that the plaintiff was entitled only to an acquittal or to the draconian punishment of dismissal without considering the alternative punishment of reduction in rank, the
D disciplinary authority has clearly not complied with general order 38 whereby it could have had the choice of any one of seven punishments for consideration.

Findings Of The Court Of Appeal

E **[4]** Two main points were considered and dealt with by the Court of Appeal. Firstly, it was the appellant's contention that the manner the three charges were framed had caused confusion in the mind of the appellant. On this contention, the Court of
F Appeal, referring to the principle established in the case of *Inspector General of Police & Anor v. Alan Noor bin Kamat* [1987] 1 LNS 101 said as follows:

> ... a scrutiny of the show cause letter reveals that it is in accordance with the law as laid down in *Inspector-General of Police*
G *& Anor v. Alan Noor bin Kamat* [1987] 1 LNS 101. Objectively speaking, there is nothing in that letter which would induce confusion in the mind of a reasonable man similarly circumstanced as the respondent. That the respondent was indeed not in a state of confusion comes across from his representation dated May 23,
H 1995 made to the Inspector-General of Police.

We fully agree with the ruling made by the Court of Appeal.

[5] The second point was in respect of an apparent conflict in the earlier decisions of the Court of Appeal namely *Ang Seng Wan*
I *v. Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 1 CLJ 493 and *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v.*

Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619. In the *Ang Seng Wan* case it was held that oral inquiry or hearing ought to have been conducted. In that case certain documents were made available to the disciplinary authority but were not made available to Ang Seng Wan. That failure tantamounts to a miscarriage of justice. In the present case the whole investigation papers were given to the Disciplinary Authority. But they were not made available to the appellant. As such the appellant contended there was a miscarriage of justice. To that argument the Court of Appeal said:

> On the facts of the case now before us, there was no evidence that the disciplinary authority had acted unfairly towards the respondent. The only material before the High Court was that the investigation papers pertaining to this case had been sent to the Inspector-General of Police. It is the appellants' case that any document required by the respondent would have been given to him if a request was made to that behalf. Learned counsel for the respondent argued that a request was unnecessary as a matter of law. It is his contention that as a matter of law there is a duty on the appellants to make available to the respondent the documents without a request being made. With respect we cannot accede to this argument. In *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619 this Court held that there is no added duty on the disciplinary authority to provide documents without any request being made by the offending officer.

In our view the finding of the Court of Appeal is correct.

The Two Questions Of Law

[6] As earlier stated, two questions of law were posed for our consideration in this appeal. In respect of the first question of law, it is of particular importance to remember the well established principle that the rule of precedent shall apply whenever the relevant facts of an earlier case are similar to the relevant facts of a subsequent case and if such situation happens the decision of the earlier case shall be binding on the subsequent case. However, such rule would only apply if the relevant facts of both cases are similar. If the relevant facts are not similar then the earlier decision would be distinguished and as such would not be binding on the subsequent case.

[7] That is exactly the position between the *Ang Seng Wan* case and the *Raja Abdul Malek* case. As can be seen from the judgment of the Court of Appeal, the relevant facts of the two cases are not similar. In the *Ang Seng Wan* case, the document and the service record had been used to determine proper sentence imposed against the police officer. At the High Court hearing, Ang Seng Wan's counsel asked for a copy of the document but was refused. In the *Raja Abdul Malek* case, no document was requested by Raja Abdul Malek at the High Court hearing. Hence, the court held that no document was required to be given to him. It was for that reason the Court of Appeal in this case followed the decision in *Raja Abdul Malek* case because no request for any document was made by the appellant.

[8] We totally agree with the decision of the Court of Appeal. The only material before the High Court was that the investigation papers pertaining to this case had been sent to the Inspector-General of Police and nothing else. There was nothing before the court that whatever contained in the investigation papers had been used adversely against the appellant except perhaps to frame the three charges against him. Hence our answer to the first question is that the *Ang Seng Wan* case is distinguished from the *Raja Abdul Malek* case and the Court of Appeal had correctly followed the decision in the *Raja Abdul Malek* case as the relevant facts in the instant case are similar to those of *Raja Abdul Malek* case.

[9] As regards the second question, we took into consideration that the appellant had admitted committing the first two charges. This is clearly shown in the letter dated 23 May 1995 in reply to the show cause letter. That being the position, what useful purpose would it serve to have an oral hearing. An oral hearing might have been necessary if the appellant had not admitted committing the offences. It tantamounts to him having pleaded guilty to those charges. As such, a hearing would no longer be necessary. The explanation which he gave would only serve to mitigate the sentence. But such explanation would not require having an oral hearing. Having it written as done by the appellant would be sufficient and would not cause any injustice to the appellant. Our answer to the second question is that on the facts and circumstances of this case, an oral hearing would not be necessary.

[10] We are of the view that based on the first two charges alone which the appellant admitted to have committed, in view of the seriousness of such offences committed by a police officer, the punishment of dismissal was quite appropriate under the circumstances. We find that the explanation given would not be sufficient to have the punishment reduced to anything less than dismissal.

[11] In the light of the circumstances as mentioned above, we are unanimous in deciding that the appeal be dismissed with costs. Deposit to the respondent to account for taxed costs.